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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,112	09/24/2003	Thomas J. Wheeler	OLYM/0095	8153

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EXAMINER	
GUADALUPE, YARITZA	

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,112	WHEELER ET AL.	
	Examiner	Art Unit	
	Yaritza Guadalupe McCall	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,7-10,12-18,20-22,25,26,28-32 and 38* is/are rejected.

7)☒ Claim(s) *3-6,11,19,23,24,27 and 33-37* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/5/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 2 and 8 are rejected under 35 U.S.C. 102 (b) as being anticipated by Claxton (US 5,394,616).

Claxton discloses a laser-positioning device comprising a base (23) having a laser (21) coupled thereto; at least one attachment means (12, 59, 61) for attaching the laser level to a surface. Claxton also discloses the particular attachment means selected for attaching the device being a magnet (See Columns 3 and 4, lines 62 – 68 and 1 – 16 respectively). Claxton further discloses a 45-degree vial (#43, see column 3, lines 34 – 37).

3. Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by Malard et al. (US 6,735,879).

Malard et al. discloses a laser line generating device comprising a housing (12) supported by a base (28) having a laser generator (10, 42) coupled thereto and at least one attachment means (26) for attaching the laser device to a surface (See Figure 9A), the attachment means consisting of an anchoring assembly, i.e., retractable sharpened projections (26), said projections having a locking mechanism (22) for selectively securing said sharpened projections in a retracted position within an adapter member defined by the interior of the housing. Malard also discloses a device further comprising a bubble vial (16, 18). Malard et al. discloses said assembly having a base having an adapter member (52) defining a compartment for receiving the power source.

4. Claim 10 is rejected under 35 U.S.C. 102(e) as being anticipated by Malard et al. (US 2004/0004825).

Malard et al. discloses a rotating laser leveling assembly comprising a base (12); a structural member (16) pivotally secured to the base; a laser (17) secured to the structural member; and an adjustment assembly (15), wherein the adjustment assembly provides a movement of the structural member relative to the base that is less than a movement applied to a handle of the adjustment assembly. Malard et al. also discloses a bubble level vial (13).

5. Claims 14 – 18, 22 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (US 6,763,598).

Chen discloses a laser level assembly (1) comprising a base (4); a laser (3); and a lens assembly (5), wherein the lens assembly selectively aligns and positions one of at least two lenses with respect to the laser. Chen further discloses said lens assembly comprising at least three lenses (52) and wherein the lens assembly is rotatable (See Column 2, lines 55 – 59). Chen also discloses said lens assembly comprising a rotary part (5) that spaces the at least two lenses on a plane in a circular arrangement and wherein the lens assembly comprises a rotary part that secures the at least two lenses on a plane in a circular arrangement, and a detent mechanism (43, 57), wherein a ball / protrusion (43) of the detent mechanism urges into a profile on an outside circumference of the rotary part.

Chen further discloses the lens assembly having a rotary part having a circular shaped center aperture (42) with a member (55) at least partially therein to attach the rotary part to the laser level assembly. Chen teaches a lens assembly (5) comprising multiple lenses, wherein a first lens provides a first symmetrical linear dispersion, since a reference light line is projected (See Columns 2 and 3, lines 52 – 54 and 5 – 15 respectively) and a second lens provides an asymmetrical linear dispersion, and said third lens provides a circular dispersion since a reference light dot is projected.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Li (US 6,782,034).

Li discloses a laser leveling device comprising a base (6) having a laser (1) coupled thereto; at least one attachment means (6) for attaching the laser level to a surface, the attachment means being a magnetic unit, an adjustment assembly (See Column 6, line 53), wherein the adjustment assembly provides a micro adjustment of at least a portion of the laser level relative to the surface; a lens assembly (20, 21), wherein the lens assembly selectively aligns and positions one of at least two lenses with respect to the laser; and an auxiliary base (7) attachable to the base to provide leveling adjustments by means of adjuster (5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Claxton (US 5,394,616) in view of Schwandt (US 5,063,679).

Claxton discloses a device as stated in paragraph 2 above.

Claxton does not discloses the adapter unit for use with an adhesive as stated in claim 7.

In regards claim 7 : Claxton discloses a device having retractable pins disposed in the bottom surface of the base (28). Schwandt discloses a laser level tool comprising a base having a bottom surface (30) having an adapter unit (32), said adapter unit having an adhesive (63) that helps secure the in place in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with adhesive as taught by Schwandt to the bottom surface of the device disclosed by Claxton in order to provide a secondary connecting mechanism that will help improve the attachment of the device to a surface and prevent undesired displacement if the primary connecting mechanism fails.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US 6,735,879) in view of Schwandt (US 5,063,679).

Malard et al. discloses a device as stated in paragraph 3 above.

Malard et al. does not discloses the adapter unit for use with an adhesive as stated in claim 28.

In regards claim 28 : Malard et al. discloses a device having retractable pins disposed in the bottom surface of the base (28). Schwandt discloses a laser level tool comprising a base having a bottom surface (30) having an adapter unit (32), said adapter unit having an adhesive (63) that helps secure the in place in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with adhesive as taught by Schwandt to the bottom surface of the device disclosed by Malard et al. in order to provide a secondary connecting mechanism that will help improve the attachment of the device to a surface and prevent undesired displacement if the primary connecting mechanism fails.

10. Claims 2, 9, 26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US 6,735,879) in view of Tursi (US 4,924,597).

Malard et al. discloses a laser line generating device comprising a housing (12) supported by a base (28) having a laser generator (10, 42) coupled thereto and at least one attachment means (26) for attaching the laser device to a surface (See Figure 9A), the attachment means consisting of an anchoring assembly, i.e., retractable sharpened projections

(26), said projections having a locking mechanism (22) for selectively securing said sharpened projections in a retracted position. Malard et al. also discloses a device further comprising a bubble vial (16, 18).

Malard et al. does not disclose the suction cup assembly as stated in claim 2. Malard et al. does not disclose the belt clip as stated in claims 9 and 31.

With respect to claim 2 : Tursi discloses a tape measure device having a housing (12) having a mounting means assembly (See Column 3, lines 3 – 12) including a suction cup assembly (See Column 4, lines 4 – 26) having a suction cup element (76) that provides a suction between the suction assembly and the surface to which the device is mounted. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a suction cup assembly as taught by Tursi to the device disclosed by Malard in order to increase the versatility of the device by providing a plurality of mounting mechanisms that securely mounts the device to different items and surfaces.

Regarding claims 9 and 31 : Tursi further discloses a device having a belt clip (50) provided on a side wall of the housing (12), said belt clip being sized and configured to securely mount the housing to the user's belt (See Column 3, lines 44 – 46). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a belt clip as taught by Tursi to the device disclosed by Malard in order to provide a

transporting mechanism that securely mounts the housing to the user's belt when the device is not being used.

11. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US 6,735,879) in view of Tursi (US 4,924,597) as applied to claims 2, 9, 26 and 31 above, and further in view of Claxton (US 5,394,616).

Malard et al. and Tursi disclose a device as stated in paragraph 10 above.

Malard et al. and Tursi does not discloses the 45-degree vial as stated in claim 30.

With regards to claim 30 : Malard et al. and Tursi disclose a device having bubble level vials (16, 18) but do not disclose the particular level vial being disposed at a 45 degree angle. Claxton discloses a laser positioning device comprising a plurality of level vials (41, 42, 43), one of said level vials (43) being disposed at a 45 degree angle (See Figure 2) in order to function as identification means or position identifiers of the spatial orientation of the device. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a bubble level vial at a 45 degree angle as taught by Claxton in the device disclosed by Malard et al. and Tursi in order to provide a fast visual indicator or identifier of the spatial orientation of the device.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US Pub. No. 2004/0004825) in view of Claxton (US 5,394,616).

Malard et al. discloses a rotating laser assembly as stated in paragraph 4 above.

Malard et al. does not discloses the 45-degree level vial as stated in claim 12.

In regards claim 12 : Claxton discloses a laser positioning device comprising a plurality of level vials (41, 42, 43), one of said level vials (43) being disposed at a 45 degree angle (See Figure 2) in order to function as identification means or position identifiers of the spatial orientation of the device. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a bubble level vial at a 45 degree angle as taught by Claxton in the device disclosed by Malard et al. in order to provide a fast visual indicator or identifier of the spatial orientation of the device.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US Pub. No. 2004/0004825) in view of Tursi (US 4,924,597).

Malard et al. discloses a rotating laser assembly as stated in paragraph 4 above.

Malard et al. does not discloses the belt clip as stated in claim 13.

Regarding claim 13 : Tursi further discloses a device having a belt clip (50) provided on a side wall of the housing (12), said belt clip being sized and configured to securely mount the housing to the user's belt (See Column 3, lines 44 – 46). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a belt clip as taught by Tursi to the device disclosed by Malard et al. in order to provide a transporting mechanism that securely mounts the housing to the user's belt when the device is not being used.

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,763,598) in view of Claxton (US 5,394,616).

Chen discloses a rotating laser assembly as stated in paragraph 5 above.

Chen does not discloses the 45-degree level vial as stated in claim 20.

In regards claim 20 : Chen discloses a bubble level vial (2) disposed in the upper surface of the assembly. Claxton discloses a laser positioning device comprising a plurality of level vials (41, 42, 43), one of said level vials (43) being disposed at a 45 degree angle (See Figure 2) in order to function as identification means or position identifiers of the spatial orientation of the

device. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a bubble level vial at a 45 degree angle as taught by Claxton in the device disclosed by Chen in order to provide a fast visual indicator or identifier of the spatial orientation of the device.

15. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,763,598) in view of Tursi (US 4,924,597).

Chen discloses a rotating laser assembly as stated in paragraph 5 above.

Chen does not discloses the belt clip as stated in claim 21.

Regarding claim 21 : Tursi further discloses a device having a belt clip (50) provided on a side wall of the housing (12), said belt clip being sized and configured to securely mount the housing to the user's belt (See Column 3, lines 44 – 46). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a belt clip as taught by Tursi to the device disclosed by Malard et al. in order to provide a transporting mechanism that securely mounts the housing to the user's belt when the device is not being used.

16. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US 6,735,879) in view of Schwandt (US 5,063,679) as applied to claim 28 above, and further in view of Dawson (US 5,379,524).

Malard et al. and Schwandt disclose a device as stated in paragraph 9 above.

Malard et al. and Schwandt do not disclose the compartment for storing the adhesive as stated in claim 29.

With respect to claim 29 : Malard et al. and Schwandt disclose an assembly having an adapter unit (52) for storing the power source but does not particularly teaches the storage of any additional components. Dawson teaches a tape measure tool having a housing (16) provided with a compartment (30) for storing spare parts (32) that may be needed during use of the tool. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a storage compartment as taught by Dawson to the assembly disclosed by Malard et al. and Schwandt in order to store spare parts or any additional component that may be needed during use of the tool.

17. Claims 32 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US Pub. No. 2004/0004825) in view of Schwandt (US 5,063,679) and further in view of Dawson (US 5,379,524).

Malard et al. discloses a leveling laser device comprising a base (12) having a laser (17) coupled thereto; and a member (14) removable from the base, said member having a flat surface (bottom surface).

Malard et al. does not discloses attaching an adhesive on one side of the member and a compartment on an opposite side for storing the adhesive as stated in claim 32.

Regarding the adhesive as stated in claim 32 : Schwandt discloses a laser level tool comprising a base having a bottom surface (30) having an adapter unit (32), said adapter unit having an adhesive (63) that helps secure the in place in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with adhesive as taught by Schwandt to the bottom surface of the member disclosed by Malard et al. in order to provide a connecting mechanism that will help prevent undesired displacement of the tool while in use.

With respect to the compartment : Malard et al. discloses a member (14) that appears to be an open compartment, however, there is no clear indication in the specification for such a use. Dawson teaches a tape measure tool having a housing (16) provided with a compartment (30) for storing spare parts (32) that may be needed during use of the tool. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the assembly disclosed by Malard et al. by providing a storage compartment in said member as taught by Dawson in order to store spare parts or any additional component that may be needed during use of the tool.

The combination of Malard et al., Schwandt and Dawson teaches a laser line generator assembly capable of projecting a reference line on an object comprising the step of attaching a laser level to a surface (See page 2, paragraph [0021]); rotating an adjustment handle (15) to provide micro adjustments of the laser level relative to the surface; and projecting a laser on the object to display the reference line.

Allowable Subject Matter

18. Claims 3 – 6, 11, 19, 23 – 24, 27 and 33 - 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

19. The following references are considered of relevance to the present application :

a. Huang et al. (US 6,722,048,)

b. Wick et al. (US 5,617,645)

c. Imbrie et al. (US 5,400,514)

d. Wu (US 6,178,649,)

e. Ponce (US 6,581,296)

f. Drew et al. (US 2,711,030)

g. Fiebig et al. (US 6,293,024)

h. Green (US 5,531,031)

i. Vasile (US 4,700,489)

j. Davis (US 6,052,911)

k. El-Katcha et al. (US 6,606,798)

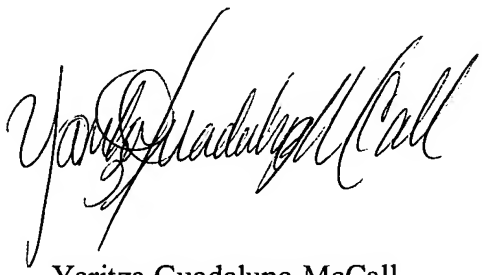
l. Seki (US 6,430,823)

m. Jang (US Pub. No. 2002/0083603)

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 2859
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